

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

IN RE AMERIQUEST MORTGAGE CO.  
MORTGAGE LENDING PRACTICES  
LITIGATION

MDL No. 1715

Lead Case No. 05-cv-07097

Centralized before The Honorable  
Marvin E. Aspen

THIS DOCUMENT RELATES TO:

*Marion Fitzsimmons v. Ameriquest Mortgage  
Company, et al.*; Case No. C.A. 07-06239

**DEFENDANT HSBC MORTGAGE SERVICES INC.'S (ERRONEOUSLY SUED AS  
HOUSEHOLD FINANCE) ANSWER  
AND AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT**

Defendant HSBC MORTGAGE SERVICES INC. (erroneously sued as Household Finance) ("Defendant"), by and through its attorneys, answers Plaintiff MARION FITZSIMMONS ("Plaintiff") Amended Complaint as follows.

**AMENDED COMPLAINT**

**INTRODUCTION**

1. This action seeks redress against Ameriquest Mortgage Company for violations of the Truth in Lending Act, 15 U.S.C. § 1601 et seq. ("TILA") and implementing Federal Reserve Board Regulation Z, 12 C.F.R. part 226.23 and its Massachusetts counterpart, Massachusetts Consumer Credit Cost Disclosure Act, Mass. G.L. ch. 140D and 209 C.M.R. part 32 (hereinafter "MCCDA").

**ANSWER:** Defendant admits that Plaintiff has filed a lawsuit against it. Defendant specifically denies that it is an affiliate of Ameriquest Mortgage Company. Defendant denies that it violated the Truth in Lending Act, 15 U.S.C. §1601 et seq., or Regulation Z, 12 C.F.R. part 226.23, or the MCCDA or any state law. Defendant denies any remaining allegations of Paragraph 1.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action under 15 U.S.C. §1640 (TILA), and 28 U.S.C. §§1331 (general jurisdiction),1332 (diversity jurisdiction) and 1337 (interstate commerce).

**ANSWER:** Defendant does not dispute subject matter jurisdiction. Defendant denies any remaining allegations of paragraph 2.

3. Venue in this District is proper under 28 U.S.C. § 1391 (b) and (c) because Defendant does business in this District. Defendant is therefore deemed to reside in this District under 28 U.S.C. § 1391(c).

**ANSWER:** Defendant does not dispute venue. Defendant denies any remaining allegations of paragraph 3.

**PLAINTIFF**

4. Plaintiff Marion Fitzsimmons resides at 15 Lake Street, Leicester, MA 01524 with her husband, George L. Fitzsimmons. They jointly own the property.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and on that basis denies such allegations.

5. On or about September 23, 2044 George L. Fitzsimmons obtained a loan from Ameriquest, secured by his residence, for the purpose of debt consolidation. All of the proceeds of the loan were used for personal, family or household purposes.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and on that basis denies such allegations.

6. In connection with the transaction, Plaintiff Marion Fitzsimmons was not provided any material disclosures, including but not limited to, the notice of right to cancel.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 and on that basis denies such allegations.

7. On or about July 17, 2005 Plaintiff Fitzsimmons exercised her extended right to rescind the loan for violations of TILA. A notice of rescission was sent to Ameriquest. A Copy of the notice is attached as Exhibit 1.

**ANSWER:** The referenced document speaks for itself; therefore no answer is required. If an answer is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and on that basis denies such allegations.

8. Ameriquest has acknowledged receipt of the notice of rescission but refused to honor the request alleging that Plaintiffs received accurate disclosures under the TILA.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 and on that basis denies such allegations.

#### **DEFENDANTS**

9. Defendant Ameriquest is a National corporation with its principle place of business at 1100 Town and Country Road, Suite 900, Orange, CA 92858.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 and on that basis denies such allegations.

10. Ameriquest enters into more than 5 transactions per year in which credit is extended that is secured by the principal residence of a consumer and is used for purposes other than the initial acquisition or construction of the residence.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 and on that basis denies such allegations.

11. Ameriquest is therefore a creditor as defined in TILA and implementing Federal Reserve Board Regulation Z.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 and on that basis denies such allegations.

12. Ameriquest is what is commonly Known as a “subprime” lender, targeting persons who have or who believe they have impaired credit.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 and on that basis denies such allegations.

13. Defendant AMC Mortgage Services, Inc., is a foreign corporation which does business in Massachusetts. It is an affiliate of Ameriquest. Its registered agent and office are National Registered Agents, Inc., 303 Congress Street, 2 d Floor, Boston, MA 02110.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 and on that basis denies such allegations.

14. Defendant AMC Mortgage Services, Inc., an affiliate of Ameriquest Mortgage Company, services loans originated by Ameriquest Mortgage Company, and claims an interest in such loans, including the right to receive payments thereunder. It is joined as a necessary party.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 and on that basis denies such allegations.

15. Defendant Ameriquest Mortgage Securities, Inc., an affiliate of Ameriquest Mortgage Company, is a foreign corporation which transacts business in Massachusetts. It is the beneficial owner of some loans originated by Ameriquest Mortgage Company, including Plaintiff s. It is located at 1100 Town & Country Road, Suite 1100, Orange, CA 92868.

**ANSWER:** Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 and on that basis denies such allegations.

16. Defendant Household Finance is a foreign corporation which does business in Massachusetts. Its registered agent and office are C.T. Corporation System, 101 Federal Street, Boston, MA 02110. Upon information and belief, it is the beneficial legal holder and assignee of

some loans originated by Amerquest Mortgage Company, including Plaintiff Fitzsimmons. It is joined as a necessary party.

**ANSWER:** Household Finance is a non-existent entity. Defendant admits that it is a foreign corporation with offices located at 26525 N. Riverwoods Blvd., Mettawa, IL 60045. Defendant admits that it, and not Household Finance, is the beneficial legal holder of some loans originated by Amerquest Mortgage Company. Defendant denies that it holds any right, title or interest in Plaintiff's loan. Defendant denies all remaining allegations of paragraph 16.

**COUNT I - TRUTH IN LENDING ACT/ MCCDA**

17. Plaintiffs incorporate §§ 1-16 as if fully set out herein.

**ANSWER:** Defendant incorporates its answers to paragraphs 1-16 in response to this paragraph.

18. Because the refinance transaction referenced herein was secured by the Plaintiff's home, and was not entered into for purposes of the initial acquisition or construction of that home, it was subject to the right to cancel provided by 15 U.S.C. 1635, Regulation Z, 12 C.F.R. §226.23 and its Massachusetts counterpart. More specifically, 15 U.S.C. § 1635 provides:

**The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section. (15 U.S.C. § 1635(a).)**

**ANSWER:** Because paragraph 18 states legal conclusions, no answer is required. If an answer is required, Defendant denies any wrongdoing and denies any liability to Plaintiff.

19. Regulation Z, promulgated by the Federal Reserve Board pursuant to the Truth in Lending Act, amplifies the statutory requirements. The regulation restates the statutory rescission right, 12 C.F.R. § 226.23(a), and requires that the creditor "deliver" to each person entitled to rescind "two copies" of a document that "clearly and conspicuously disclose" 12

C.F.R. § 226.23(b)(1) the borrower's rescission rights. More specifically, the regulation provides:

**In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered by electronic communication as provided in § 226.36(b)). The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:**

- (i) The retention or acquisition of a security interest in the consumer's principal dwelling.**
- (ii) The consumer's right to rescind the transaction.**
- (iii) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.**
- (iv) The effects of rescission, as described in paragraph (d) of this section.**
- (v) The date the rescission period expires. (12 C.F.R. § 226.23(b)(1).) Emphasis added**

**ANSWER: Because paragraph 19 states legal conclusions, no answer is required. If an answer is required, Defendant denies any wrongdoing and denies any liability to Plaintiff.**

20. In connection with the referenced loan, the Defendant Ameriquest failed to deliver to the Plaintiff material disclosures, including but not limited to, her own "two copies" of a document that "clearly and conspicuously disclose" her rescission rights, in violation of 15 U.S.C. §1635, Regulation Z, 12 C.F.R. §226.23 and its Massachusetts counterpart.

**ANSWER: Because paragraph 20 states legal conclusions, no answer is required. If an answer is required, Defendant denies any wrongdoing and denies any liability to Plaintiff.**

21. 15 U.S.C. § 1635(g) provides that a court may award damages under section 1640 in addition to rescission. Mass .G.L. ch. 140D § 10(g) is identical except for citation.

**ANSWER: Because paragraph 21 states legal conclusions, no answer is required. If an answer is required, Defendant denies any wrongdoing and denies any liability to Plaintiff.**

22. The failure of the Defendants to honor/respond to the notice of rescission is a separate violation of 15 U.S.C. § 1640 (a) entitling the Plaintiff to an award of statutory damages.

**ANSWER:** Because paragraph 22 states legal conclusions, no answer is required. If an answer is required, Defendant denies any wrongdoing and denies any liability to Plaintiff.

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendants as follows:

1. A declaration that Plaintiff is entitled to rescind;
2. Rescission of the loan;
3. Statutory damages;
4. Attorney's fees, litigation expenses and costs.
5. Such other relief as the Court deems appropriate.

**ANSWER:** No answer is required. If an answer is required, Defendant denies any wrongdoing and denies any liability to Plaintiff.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff's purported cause of action fails to state a claim upon which relief may be granted.
2. Plaintiff's claims are barred by the applicable statute of limitations.
3. Plaintiff's claims are barred in whole or in part under the doctrine of estoppel, laches and/or waiver.
4. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.
5. Plaintiff's claims are barred by the applicable statute of frauds.
6. Plaintiff's claims are barred in whole or in part because he has failed to mitigate his damages.

7. Plaintiff's claims are barred, in whole or in part, because each and every purported cause of action is uncertain.

8. Plaintiff's claims are barred, in whole or in part, because any acts or failure to act on the part of Defendant were excused by the actions of Plaintiff or others.

9. Plaintiff's claims are barred in whole or in part, on the ground that if Plaintiff was damaged or a statute was violated in any manner whatsoever, such damage or violation, if any, was a direct and proximate result of the intervening and superseding actions on the part of other parties and/or persons or entities and not Defendant, and any such intervening or superseding action of said parties and/or persons or entities bars Plaintiffs' recovery.

10. Plaintiff, by his knowledge, statements and/or conduct, has consented and/or acquiesced to the alleged acts and/or omissions of Defendant described in the Complaint.

11. As to each cause of action, Defendant is entitled to an offset.

12. Plaintiff's claims are barred in whole or in part, because Defendant has committed no act or omission causing any damage to Plaintiff.

13. Plaintiff's claims are barred in whole or in part, because Plaintiff expressly, ostensibly and/or implicitly authorized or ratified the transactions at issue.

14. Plaintiff's claims are barred in whole or in part, because Plaintiff would be unjustly enriched if allowed to recover on the Complaint.

15. Plaintiff's claims are barred in whole or in part, because they are a member of a prior settlement or class that released some or all claims alleged by Plaintiff.

16. Defendant alleges that it presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses. Defendant reserves its right to file an amended answer asserting additional defenses, and/or to file a counter or cross-complaint in the event that discovery indicates that either is appropriate.



**PRAYER**

Defendant prays this court to:

1. Dismiss plaintiffs' Complaint;
2. Enter judgment for Defendant and against Plaintiffs in this action;
3. Award Defendant its costs of suit; and
4. Grant Defendant any and all further and additional relief as it deems just and appropriate.

Respectfully submitted,

DATED: July 11, 2008

By: /s/ Bernard E. LeSage  
*Attorneys for HSBC MORTGAGE  
SERVICES INC.*

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**CERTIFICATE OF SERVICE**

I, Connie Madrigal, hereby certify that on this 11<sup>th</sup> day of July 2008, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by electronic mail to all counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

By:           /s/ Connie Madrigal